

**VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES**

Friday, September 16, 2011

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting of the Committee convened at 8:59 a.m.

MEMBERS PRESENT: Valerie Hoffman, DC, Chair
Deeni Bassam, MD
Randy Clements, MD
Claudette Dalton, MD
Gopinath Jadhav, MD

MEMBERS ABSENT: Michael Signer, JD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Director, Discipline
Ola Powers, Deputy Director, Licensure
Barbara Matusiak, MD, Medical Review Coordinator
Colanthia Morton Opher, Operations Manager
Elaine Yeatts, DHP Senior Policy Analyst
Dianne L. Reynolds-Cane, MD, Director of DHP
Amy Marschean, Sr. Assistant Attorney General

OTHERS PRESENT: Tyler Cox, MSV
Jessica Philips, Commonwealth Autism
Lauren Bull, Virginia Chapter of the American Academy of Pediatrics
Becky Bowers-Lanier, Commonwealth Midwives Alliance
Catherine Harrison, Virginia Association of Health Plans
Susan Ward, VHHA

ROLL CALL

EMERGENCY EGRESS INSTRUCTIONS

Dr. Dalton provided the emergency egress instructions.

APPROVAL OF MINUTES OF JANUARY 21, 2011

Dr. Bassam moved to approve the minutes of January 21, 2011 as presented. The motion was seconded and carried.

ADOPTION OF AGENDA

Dr. Bassam requested that agenda item #2 – Regulatory Recommendation – Licensure of Behavior Analysts--be struck from the agenda. Dr. Dalton seconded. The motion was carried unanimously.

PUBLIC COMMENT

There was no public comment.

NEW BUSINESS

Regulatory Actions

Ms. Yeatts gave a brief summary of the status of regulations as of September 6, 2011. This item was for informational purposes only and did not require any action by the Committee.

Regulatory Recommendation – Licensed Midwives

Ms. Yeatts reviewed the five supportive comments received on this regulatory recommendation. Ms. Yeatts noted that one of the comments suggested that the same disclosure requirements be applied to OB/GYNs. Ms. Yeatts also commented that no other substantial changes were recommended.

Ms. Yeatts advised that these comments and the proposed regulations will be discussed at the upcoming meeting of the Advisory Board on Midwifery, October 7, 2011. The Board of Medicine will consider all recommendations when it votes on final regulations on October 20, 2011.

Dr. Dalton moved that the proposed regulations for disclosure by midwives be forwarded to the Full Board for consideration and adoption. Dr. Jadhav seconded. The motion carried unanimously.

Regulatory Recommendation – Standards of Professional Conduct

Ms. Yeatts reviewed a letter from Attorney General Cuccinelli to Governor Robert McDonnell regarding the reporting of child abuse. There is currently a requirement to report suspected child abuse for health care professionals in Social Services law, and there is a penalty for failure to report. The recommendation from the Attorney General would add disciplinary action by the Board of Medicine to the consequences of not making a mandated report. Ms. Yeatts posed the question as to whether additional language is needed since §54.1-2915. ***Unprofessional conduct; grounds for refusal or disciplinary action*** states: (3). *Intentional or negligent conduct in the practice of any branch of the healing arts that causes or is likely to cause injury to a patient or patients.*

Ms. Yeatts presented the suggested language from the Office of the Attorney General to amend *Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic*, 18 VAC 85-20

C. Practitioners shall require that any subordinate or employee who, during the course of working for or providing services on behalf of practitioner, has reason to suspect that a child is an abused or neglected child as defined in Virginia Code §63.2-100 shall inform the practitioner. Practitioner shall report such suspicion in accordance with Virginia Code 63.2-1509. If practitioner also has reason to suspect that an act of sexual exploitation or a sexual act is being committed upon a child in violation of the law, including that a child has been or is participating, voluntarily or involuntarily, in prostitution or unlawful sexual intercourse, practitioner shall notify the local law enforcement agency serving the area where the practitioner's office is located. Failure to make a report pursuant to this section constitutes unprofessional conduct under Virginia Code §54.1-2915(13).

Dr. Bassam stated that he would be in favor of expanding on and carving out language specific to child abuse.

The Committee discussed at length the reporting responsibilities of Board of Medicine licensees and their employees. The need was seen for a contract with subordinates or employees to report any suspicion of child abuse to the licensee/employer in order to enforce the above language. The members of the Committee made the observation that physicians generally do not have contractual agreements with their administrative staff. The point was made that if an employee did not inform the licensee of suspected abuse, it would be difficult to hold the licensee accountable for not reporting information of which he/she was unaware. Addressing this responsibility in contract was seen as the optimal way to ensure reporting by subordinates or employees and also provide proper protection for the licensee should there be an allegation of failure to report information of which the licensee was unaware.

The Committee also discussed the limitations the Board has in taking disciplinary action against its licensees based on another agency's law. It was pointed out that the Board has no specific law to deal with failure to sign death certificates and failure to make other required reports, such as injuries from possible terrorist activity and with infectious diseases. It was reiterated that the Board does not have the statutory authority to enforce another agency's law and that creating that authority in Board of Medicine law may or may not be the best way to proceed. Further, it was noted that the other agencies, e.g., the Department of Health and the Department of Social Services, typically have penalty provisions built into their basic law.

Dr. Dalton stated that with the language as proposed, a licensee will be required to report suspected abuse with limited information and no first-hand knowledge.

Ms. Marschean stated that in expanding the Board's Regulations to include child abuse reporting, a practitioner would not be able to claim a lack of knowledge of suspected abuse. Ms. Marschean advised that from the standpoint of appeals, carefully crafted language in §54.1-2915 would be a more efficient way to reinforce the reporting requirement and provide the Board the statutory ability to take disciplinary action.

After a brief discussion, Dr. Bassam moved to recommend to the full Board that it take action to incorporate failure to report child and elder abuse under §63.2 into its regulations such that disciplinary action may be taken by the Board. Dr. Jadhav seconded the motion. The motion carried unanimously.

In closing this business item, Ms. Yeatts stated that it would be good to include the language found in other reporting statutes, e.g., if a practitioner has knowledge that the potential abuse has been reported, he/she is not required to file a duplicate report.

Dr. Harp and Ms. Deschenes stated that the Board infrequently receives complaints relative to child abuse. Those that it does receive have some relationship to a licensee, but perhaps not to the practice of his/her profession.

It was recommended that the Legislative Committee continue looking into reporting issues at the next meeting.

ANNOUNCEMENTS

Dr. Bassam announced he will be asking the Medical Society of Virginia in October to carry legislation that will expand law enforcement's access to the Prescription Monitoring Program database. He also will propose a Good Samaritan law to protect those that report friends that have overdosed to emergency services for emergent medical help.

Dr. Harp reminded the Committee of the upcoming Full Board meeting October 20th and encouraged them to be in attendance. Dr. Harp officially announced the resignation of Jennifer Lee, MD who vacated her seat with the Board to accept a White House fellowship.

Dr. Hoffman reiterated the importance of attending scheduled meetings and asked all to coordinate their October availability with the discipline staff.

Dr. Dalton thanked everyone for their service to the Board in these times of limited resources.

Next meeting – January 2012

Adjournment - With no other business to conduct, the meeting adjourned at 11:45 a.m.

Valerie L. Hoffman, D.C., Vice-President
Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary